LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
SEP 17 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1965

No. 581

MIRIAM J. WOLF,

Petitioner,

v.

CLAY BLAIR, JR., MATTHEW J. CULLIGAN, MILTON S. GOULD, MARVIN D. CANTOR and THE CURTIS PUBLISHING COMPANY,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PAUL L. ROSS,
845 Third Avenue,
New York, New York 10022,
Counsel for Petitioner.

HENRY H. WOLF and
WOLF POPPER ROSS WOLF & JONES,
Of Counsel.

INDEX

	PAGE
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Statutes Involved	2
Statement	4
Reasons for Granting the Writ	6
APPENDIX—Opinion of the United States Court of Appeals for the Second Circuit	1a

Table of Cases Cited

Hawes v. Oakland, 104 U. S. 450	7, 10
J. I. Case Co. v. Borak, 377 U. S. 426 [1964]	11
Sibbach v. Wilson & Co., 312 U. S. 1 (1941)	6, 11
Washington-Southern Nav. Co. v. Baltimore & P. S. Co., 263 U. S. 629	10

Statutes Cited

Federal Rules of Civil Procedure:	
Rule 23(c)	2, 3, 5, 6, 7, 8, 9, 10, 11
Securities and Exchange Act of 1934 (15 U. S. C. § 78(n)(a):	
Section 14a	4
Section 27	4
28 U. S. C. § 1254(1)	2
28 U. S. C. § 1292(a)(i)	5
28 U. S. C. §§ 1331, 1337	4
28 U. S. C. § 2072	6, 10

IN THE

Supreme Court of the United States

October Term, 1965

No.

MIRIAM J. WOLF,

Petitioner,

v.

CLAY BLAIR, JR., MATTHEW J. CULLIGAN, MILTON S. GOULD, MARVIN D. CANTOR and THE CURTIS PUBLISHING COMPANY,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in the above entitled case on June 21, 1965.

Opinions Below

No opinion was rendered by the District Court. The opinion of the Court of Appeals, per Friendly, Circuit Judge, is not yet officially reported. It is reprinted as an Appendix to this petition. The concurring opinion of Circuit Judge Waterman follows in the same Appendix.

Jurisdiction

The judgment of the Court of Appeals was entered on June 21, 1965.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

Questions Presented

1. Does Federal Rules of Civil Procedure Rule 23(c) empower the District Court to enjoin settlement by a corporation and its officers of claims which are involved in a stockholder's derivative action in the federal court, challenging the arrangements between them, except upon notice to all stockholders and subject to court approval?

2. Does the pendency in a federal court of a stockholder's derivative action challenging arrangements between a corporation and its officers deprive the corporation and the officers involved of power to make an out-of-court settlement—without notice to all stockholders and court approval as required by F. R. C. P. Rule 23(c)?

Statutes Involved

Rule 23 of the Federal Rules of Civil Procedure provides as follows:

> "RULE 23. *Class Actions*
>
> (a) *Representation.* If persons constituting a class are so numerous as to make it impracticable to bring them all before the court, such of them, one or more, as will fairly insure the adequate representation of all may, on behalf of all, sue or be sued, when the character of the right sought to be enforced for or against the class is
>
> (1) joint, or common, or secondary in the sense that the owner of a primary right refuses to enforce

that right and a member of the class thereby becomes entitled to enforce it;

(2) several, and the object of the action is the adjudication of claims which do or may affect specific property involved in the action; or

(3) several, and there is a common question of law or fact affecting the several rights and a common relief is sought.

(b) *Secondary Action by Shareholders.* In an action brought to enforce a secondary right on the part of one or more shareholders in an association, incorporated or unincorporated, because the association refuses to enforce rights which may properly be asserted by it, the complaint shall be verified by oath and shall aver (1) that the plaintiff was a shareholder at the time of the transaction of which he complains or that his share thereafter devolved on him by operation of law and (2) that the action is not a collusive one to confer on a court of the United States jurisdiction of any action of which it would not otherwise have jurisdiction. The complaint shall also set forth with particularity the efforts of the plaintiff to secure from the managing directors or trustees and, if necessary, from the shareholders such action as he desires, and the reasons for his failure to obtain such action or the reasons for not making such effort.

(c) *Dismissal or Compromise.* A class action shall not be dismissed or compromised without the approval of the court. If the right sought to be enforced is one defined in paragraph (1) of subdivision (a) of this rule notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs. If the right is one defined in paragraphs (2) or (3) of subdivision (a) notice shall be given only if the court requires it."